

## REMARKS

Upon entry of the foregoing Amendment, claims 1-6, 9-13, 15-18, 20-21, and 23-26 are pending in the application. Claims 1, 3, 5-6, 9-13, 15-18, 20-21, 23, and 25-26 have been amended. Claim 22 is cancelled. No claims are newly added. Applicant believes that this Amendment does not add new matter. In view of the foregoing Amendment and following Remarks, allowance of all the pending claims is requested.

### EXAMINER INTERVIEW

Applicant thanks Examiner Swearingen for granting Applicant's representative the courtesy of an Examiner Interview on January 31, 2007. During the interview, Applicant's representative discussed claims 1-6, 9-13, 15-18, 20-21, and 23-26 in light of the rejections, as set forth below in further detail.

### NON-STATUTORY DOUBLE PATENTING REJECTION

The Examiner has rejected claim 1 under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claim 1 of U.S. Patent No. 6,430,712. Final Action at 5. Applicant will consider filing a terminal disclaimer to overcome this rejection once otherwise patentable subject matter is determined. Applicant further notes that filing a terminal disclaimer to obviate a rejection based on non-statutory double patenting is not an admission of the propriety of the rejection. *See Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870 (Fed. Cir. 1991).

### REJECTION UNDER 35 U.S.C. § 112

The Examiner has rejected claims 1, 6, 8, 11, 13-14, 18, 20-23, and 26 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Office Action at 2-3. In particular, the Examiner alleges that the claim terms that recite "desirable state" and "undesirable state" are indefinite because the specification allegedly does not "provide a

standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.” Office Action at 2. Applicant traverses this rejection because the claims do point out and distinctly claim the subject matter which Applicant regards as the invention.

More particularly, a claim is not indefinite when “one of ordinary skill in the art would understand what is claimed when the claim is read in light of the specification.” *Seattle Box Co. v. Industrial Crating & Packing, Inc.*, 731 F. 2d 818, 826 (Fed. Cir. 1984). Even “[w]hen a word of degree is used,” the relevant inquiry is “whether the . . . specification provides some standard for measuring that degree.” *Id.* In Applicant’s invention, a person having ordinary skill in the art would readily understand what may be considered “desirable” or “undesirable” states. Furthermore, the written description provides several examples as to when a state may be “desirable” or “undesirable” (e.g., on pages 62-63, among other instances), thereby supporting and providing examples of the claimed subject matter. Accordingly, Applicant requests that the Examiner withdraw this rejection of the claims.

#### **REJECTION UNDER 35 U.S.C. § 102**

The Examiner has rejected claims 1-6, 9-13, 15-18, and 20-26 under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,336,139 to Feridun et al. (“Feridun”). Office Action at 3-5. Applicant traverses this rejection because Feridun does not disclose each and every feature of the claimed invention.

More particularly, Feridun does not disclose at least the feature of “an alarm correlation agent that receives the generated alarms from the monitoring agents, wherein the alarm correlation agent determines a current state of the service based on the received alarms,” as recited in claim 1, for example. The Examiner alleges that Feridun teaches this claim feature at col. 8, lines 15-45. Office Action at 3. Applicant disagrees with the Examiner’s assessment.

The relied upon portions of Feridun relate to a distributed monitor (DM) that monitors the activities of network resources, such as “storage devices and subsystems, printers, given programs and/or tasks, and any other managed resource” (e.g., col. 7, lines 21-40). Feridun

discloses that the DM receives and/or generates events that occur in the monitored resources, and the DM subsequently sends the events to a correlation engine (e.g., col. 8, lines 15-45, “When the distributed monitor receives an event, it first checks the registration list 59 for a match. If any internal module (in the DM 50) has expressed interest in the event class, the event is sent to a correlation engine”). Further, Feridun discloses that the correlation engine analyzes the events to determine whether a given event condition or “pattern” has occurred, thereby triggering a system response (e.g., col. 9, line 1 – col. 10, line 4, “the correlation rules 67 are configured at build time for the purpose of examining a certain set of events for some observable condition. Thus, a given correlation rule . . . relates disparate events to a more generic problem”).

At best, these passages in Feridun relate to software agents that detect the occurrence of events in managed network resources, and an engine that correlates the events against various rules to determine whether a given event condition or pattern has occurred. Even assuming *arguendo* that these event conditions relate to “alarms,” Feridun does not disclose “an alarm correlation agent that receives the generated alarms . . . [and] determines a current state of the service based on the received alarms,” as recited in claim 1, for example.

For at least the foregoing reasons, Feridun fails to disclose all the features of claim 1. Accordingly, the rejection is improper and must be withdrawn. Claims 6, 11, 13, 18, 21, 23, and 26 each recite features similar to those set forth in claim 1. Claims 2-5, 9-10, 12, 15-17, 20, and 24-25 depend from and add features to one of claims 1, 6, 11, 13, 18, 21, and 23. Thus, the rejections of these claims are likewise improper and must be withdrawn for at least the same reasons.

## CONCLUSION

Having addressed each of the foregoing rejections, it is respectfully submitted that a full and complete response has been made to the outstanding Office Action and, as such, the application is in condition for allowance. Notice to that effect is respectfully requested.

If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Date: February 22, 2007

Respectfully submitted,

By:



S. Jafar Ali

Registration No. 58,780

PILLSBURY WINTHROP SHAW PITTMAN LLP

P.O. Box 10500

McLean, Virginia 22102

Main: 703-770-7900

Direct: 703-770-7541

Fax: 703-770-7901